

JAN 18 2013

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# A BILL FOR AN ACT

RELATING TO MENTAL HEALTH TREATMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. The legislature finds that:

- (1) Hawaii has identified serious problems of high incarceration and hospitalization rates of those with severe mental illness;
- (2) Assisted community treatment provides an opportunity for people with serious mental illness to be treated in the least restrictive setting; and
- (3) Assisted community treatment reduces the trend towards criminalizing mental illness.

Individuals with severe mental illness often cycle between homelessness, emergency room treatment, incarceration, and hospitalization. This situation reflects a failure to provide needed treatment to persons who may need it most and that treatment is extremely costly; however, the legislature finds that the situation can be mitigated if individuals are assisted in being treated in the community.

In several states that have implemented assisted community treatment similar to this Act, research shows that



1 hospitalization rates have dropped by half, the length of  
2 hospital stays has been reduced by up to thirty days per  
3 patient, arrest rates have declined by up to two-thirds, and  
4 days spent in correctional confinement facilities have been  
5 reduced by seventy-two per cent. Moreover, patients in one  
6 state program, despite having violent histories, were found to  
7 be four times less likely to perpetrate serious violence after  
8 being in an assisted community treatment program.

9 The purpose of this Act is to establish an assisted  
10 community treatment program.

11 SECTION 2. Section 334-121, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "~~§334-121~~ **Criteria for ~~[involuntary outpatient]~~ assisted**  
14 **community treatment.** A person may be ordered to obtain  
15 ~~[involuntary outpatient]~~ assisted community treatment if the  
16 family court finds that:

17 (1) The person is suffering from a severe mental disorder  
18 or from substance abuse; and

19 (2) The person is ~~[capable of surviving]~~ unlikely to  
20 survive safely in the community ~~[with]~~ without  
21 available supervision ~~[from family, friends, or~~



1        ~~others,~~] based on the professional opinion of a  
2        psychiatrist; and

3        (3) The person, at some time in the past: (A) has  
4        received inpatient hospital treatment for a severe  
5        mental disorder or substance abuse, or (B) has been  
6        imminently dangerous to self or others, or is gravely  
7        disabled, as a result of a severe mental disorder or  
8        substance abuse; and

9        (4) The person, based on the person's treatment history  
10       and current ~~[behavior,~~] condition, is now in need of  
11       treatment in order to prevent a relapse or  
12       deterioration which would predictably result in the  
13       person becoming imminently dangerous to self or  
14       others~~]~~ or gravely disabled; and

15       (5) The person has a history of lack of adherence to  
16       treatment for mental illness or substance abuse that  
17       includes but is not limited to the following examples:

18       (A) At least twice within the last thirty-six months,  
19       the lack of adherence to treatment has been a  
20       significant factor in: law enforcement being  
21       called in response to the person's behavior and  
22       in meeting the criteria for involuntary



1                   transportation to a hospital for psychiatric  
2                   evaluation; in necessitating hospitalization in a  
3                   facility providing inpatient treatment; or in  
4                   treatment by a forensic or other mental health or  
5                   substance abuse unit of a correctional facility  
6                   or a local correctional facility; or

7           (B)   The lack of adherence to treatment has resulted  
8                   in one or more acts of serious violent behavior  
9                   toward self or others or threats of, or acts of  
10                  serious physical harm to self or others within  
11                  the last forty-eight months;

12       [~~(5)~~]   (6)   The person's current mental status or the nature  
13                   of the person's disorder limits or negates the  
14                   person's ability to make an informed decision to  
15                   voluntarily seek or comply with recommended treatment;  
16                   and

17       [~~(6)~~]   (7)   There is a reasonable prospect that the  
18                   [~~outpatient~~] assisted community treatment ordered will  
19                   be beneficial to the person[~~-~~] as the least  
20                   restrictive alternative."

21       SECTION 3.   Section 334-122, Hawaii Revised Statutes, is  
22       amended to read as follows:



1        "[~~f~~]~~\$334-122~~[~~f~~] **Definitions.** For the purposes of this  
2 part:

3        [~~"Outpatient"~~] "Assisted community treatment" includes  
4 medication specifically authorized by court order; individual or  
5 group therapy; day or partial day programming activities;  
6 services and training, including educational and vocational  
7 activities; supervision of living arrangements; and any other  
8 services prescribed to either alleviate the person's disorder or  
9 disability, [~~to~~] maintain or maximize semi-independent  
10 functioning, or [~~to~~] prevent further deterioration that may  
11 reasonably be predicted to result in the need for  
12 hospitalization[~~-~~] or more intensive or restrictive levels of  
13 care in the community or incarceration for criminal behavior.

14        "Community" includes any location where an individual may  
15 receive behavioral health services, including but not limited to  
16 hospitals and emergency rooms, correctional facilities, state  
17 contracted or private behavioral health programs, independent  
18 living, community health centers, and crisis or homeless  
19 shelters and programs.

20        "Designated mental health program" includes a state-  
21 operated or privately-contracted provider who is authorized to  
22 provide mental health services including but not limited to:



1 inpatient treatment, outpatient treatment, case management, day  
2 treatment, crisis services, mental health services in  
3 correctional facilities, or adult mental health division  
4 community mental health centers.

5 "Gravely disabled" means that a person is incapable of  
6 making an informed medical decision and has behaved in such a  
7 manner as to indicate that the person is unlikely, without  
8 supervision and assistance of others, to satisfy the person's  
9 need for either nourishment, personal or medical care, shelter,  
10 or self-protection and safety, so that it is probable that  
11 substantial bodily harm, significant psychiatric deterioration  
12 or debilitation, or serious illness will result unless adequate  
13 treatment is afforded.

14 "Interested party" means a parent, grandparent, spouse,  
15 sibling, reciprocal beneficiary, civil union partner, service  
16 provider, case manager, outreach worker, or mental health  
17 professional.

18 ~~["Outpatient treatment psychiatrist" means the psychiatrist~~  
19 ~~who is responsible for the management and supervision of a~~  
20 ~~person's outpatient treatment under order of the court.]~~



1 "Subject of the order" means a person who has been ordered  
2 by the court to obtain ~~[outpatient]~~ assisted community  
3 treatment.

4 "Subject of the petition" means the person who, under a  
5 petition filed under section 334-123, is alleged to meet the  
6 criteria for ~~[involuntary-outpatient]~~ assisted community  
7 treatment.

8 "Treating psychiatrist" means the psychiatrist who is  
9 responsible for the management and supervision of a person's  
10 treatment under order of the court."

11 SECTION 4. Section 334-123, Hawaii Revised Statutes, is  
12 amended by amending subsection (a) to read as follows:

13 "(a) Any ~~[person]~~ interested party may file a petition  
14 with the family court alleging that another person meets the  
15 criteria for ~~[involuntary-outpatient]~~ assisted community  
16 treatment. The petition shall state:

17 (1) Each of the criteria numbered (1) through ~~[(6)]~~ (7)  
18 for ~~[involuntary-outpatient]~~ assisted community  
19 treatment, as set out in section 334-121;

20 (2) Petitioner's good faith belief that the subject of the  
21 petition meets each of criteria numbered (1) through

22 ~~[(4)]~~ (7) set forth in section 334-121;



- (3) Facts which support petitioner's good faith belief that the subject of the petition meets each of the criteria numbered (1) through ~~[(4)]~~ (7) set forth in section 334-121[, ~~provided that the hearing on the petition need not be limited to the stated facts~~]; and
- (4) That the subject of the petition is present within the county where the petition is filed.

The hearing on the petition need not be limited to the facts stated in the petition.

The petition shall be executed subject to the penalties of perjury. The petition need not express any belief, or state any supporting facts, with reference to the criteria set forth in section 334-121(5) ~~[and]~~, (6), and (7), but all ~~[six]~~ seven criteria will be addressed at the hearing."

SECTION 5. Section 334-125, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The notice shall include the following:

- (1) The date, time, place of hearing, a clear statement of the purpose of the hearing and possible consequences to the subject, and a statement of the legal standard upon which ~~[involuntary outpatient]~~ assisted community treatment is ~~[authorized]~~ being considered;





1 (2) A copy of the petition; and

2 (3) Notice that the subject of the petition is ~~[entitled]~~  
3 required to be represented by an attorney, and that  
4 the court will appoint a public defender or ~~[other~~  
5 ~~attorney for the subject if the subject desires one~~  
6 ~~and is indigent.]~~ unless the subject of the petition  
7 chooses to be represented by an attorney of the  
8 subject's choice."

9 SECTION 6. Section 334-126, Hawaii Revised Statutes, is  
10 amended by amending subsections (g) and (h) to read as follows:

11 "(g) No subject of the petition shall be ordered to  
12 receive ~~[involuntary outpatient]~~ assisted community treatment  
13 unless at least one psychiatrist testifies in person at the  
14 hearing who has personally ~~[examined]~~ assessed the subject  
15 within the time period commencing ~~[five]~~ ten calendar days  
16 before the filing of the petition and ending at the time of the  
17 psychiatrist's testimony. The psychiatrist's testimony shall  
18 state the facts which support the allegation that the subject  
19 meets all the criteria for ~~[involuntary outpatient]~~ assisted  
20 community treatment, ~~[the recommended outpatient]~~ provide a  
21 written treatment[7] plan, which shall include non-mental health  
22 treatment, and provide the rationale for the recommended



1 [outpatient] treatment[-], and identify the provider or  
2 organization responsible for the coordination of care.

3 If the recommended [outpatient] assisted community  
4 treatment includes medication, the psychiatrist's testimony  
5 shall describe the types or classes of [medication(s)]  
6 medication which should be authorized, and describe the physical  
7 and mental beneficial and detrimental effects of such  
8 [medication(s)-] medication.

9 If the subject of the petition has refused to be examined  
10 by a licensed psychiatrist, the family court may request the  
11 subject to consent to examination by a psychiatrist appointed by  
12 the court or employed at a community mental health center. If  
13 the subject of the petition does not consent and the family  
14 court finds sufficient evidence to believe that the allegations  
15 in the petition are true, the family court may order the  
16 commitment of the subject to a psychiatric facility for  
17 examination. The commitment shall not be for more than twenty-  
18 four hours. The examining psychiatrist shall submit the  
19 findings and recommendations to the family court.

20 ~~[The subject of the petition's refusal to submit~~  
21 ~~voluntarily to examination shall be treated as a denial that the~~  
22 ~~subject is suffering from a severe mental disorder or substance~~



1 ~~abuse, and a denial that the subject otherwise fits within the~~  
2 ~~criteria for a court order of involuntary outpatient treatment.]~~

3       Nothing herein shall be construed in a way that limits the  
4 subject of the petition's privilege against self-incrimination.

5       (h) The subject of the petition may secure ~~[one or more]~~ a  
6 psychiatric ~~[examinations]~~ examination and present the findings  
7 as evidence at the hearing. The subject shall be entitled to a  
8 psychiatric examination at a community mental health center if  
9 the subject so desires, and if an examination has not already  
10 been conducted at a community mental health center which will  
11 lead to psychiatric testimony at the hearing."

12       SECTION 7. Section 334-127, Hawaii Revised Statutes, is  
13 amended to read as follows:

14       "~~[+]~~**\$334-127**~~[+]~~ **Disposition.** (a) If after hearing all  
15 relevant evidence, including the results of an examination  
16 ordered by the family court, the family court finds that the  
17 subject of the petition does not meet the criteria for  
18 ~~[involuntary outpatient]~~ assisted community treatment, the  
19 family court shall dismiss the petition.

20       (b) If after hearing all relevant evidence, including the  
21 results of an examination ordered by the family court, the  
22 family court finds by clear and convincing evidence that the



1 +subject of the petition meets the criteria for [~~involuntary~~  
2 ~~outpatient~~] assisted community treatment, the family court shall  
3 order the subject to obtain [~~outpatient~~] assisted community  
4 treatment for a period of not more than 180 days. [~~The order~~  
5 ~~shall also state the outpatient treatment which the subject is~~  
6 ~~to obtain.~~]

7 If the court finds by clear and convincing evidence that  
8 the beneficial mental and physical effects of recommended  
9 [~~medication(s)~~] medication outweigh the detrimental mental and  
10 physical effects, if any, the order may authorize types or  
11 classes of [~~medication(s)~~] medication to be included in  
12 [~~outpatient~~] treatment [~~in~~] at the discretion of the [~~outpatient~~  
13 ~~treatment~~] treating psychiatrist.

14 The court order shall also state who should receive notice  
15 of intent to [~~early~~] discharge early in the event that the  
16 [~~outpatient treatment~~] treating psychiatrist determines, prior  
17 to the end of the court ordered period of treatment, that the  
18 subject should be [~~early~~] discharged early from [~~outpatient~~  
19 ~~involuntary~~] assisted community treatment.

20 (c) The family court shall also designate on the order the  
21 [~~outpatient treatment~~] treating psychiatrist who is to be  
22 responsible for the management and supervision of the subject's



1   ~~[outpatient]~~ treatment, or shall ~~[designate]~~ assign an  
2   administrator of a ~~[community]~~ designated mental health ~~[center]~~  
3   program to, in turn, designate ~~[such an outpatient treatment]~~  
4   the treating psychiatrist during the treatment period without  
5   court approval, and may designate either a publicly employed  
6   psychiatrist, or a private psychiatrist, provided that the  
7   private psychiatrist shall agree to the designation.

8       (d) Nothing in this section shall preclude the subject's  
9   stipulation of continuing an existing court order."

10       SECTION 8. Section 334-128, Hawaii Revised Statutes, is  
11   amended to read as follows:

12       "~~[+]~~**\$334-128**~~[+]~~   **Treatment costs and fees.** Private  
13   treatment pursuant to the court order shall be at the expense of  
14   the subject of the petition, except to the extent such charges  
15   are covered by other laws or programs. Treatment through a  
16   ~~[community]~~ designated mental health ~~[center]~~ program shall be  
17   pursuant to its fee schedules; however, the subject of the order  
18   shall not be denied treatment by a ~~[community]~~ designated mental  
19   health ~~[center]~~ program for failure to pay ~~[such]~~ the fees."

20       SECTION 9. Section 334-129, Hawaii Revised Statutes, is  
21   amended to read as follows:



1            "[+]§334-129[+] Failure to comply with ~~[outpatient]~~  
2 community treatment. (a) ~~[An outpatient treatment]~~ A treating  
3 psychiatrist may prescribe or administer to the subject of the  
4 order reasonable and appropriate medication~~[,]~~ or medications,  
5 if specifically authorized by the court order, and treatment  
6 which is consistent with accepted medical standards and the  
7 family court order.

8            (b) No subject of the order shall be physically forced to  
9 take medication ~~[or forcibly detained for treatment]~~ under a  
10 family court order for ~~[involuntary outpatient treatment.]~~  
11 assisted community treatment except under the order of a  
12 psychiatrist while hospitalized in a correctional setting.

13            The subject of the order may be forcibly detained for  
14 transport. A service provider, police officer or other law  
15 enforcement officer, or other interested party may transport the  
16 subject of the order to a designated mental health program for  
17 the purposes of implementation of the assisted community  
18 treatment order.

19            (c) The ~~[outpatient treatment]~~ treating psychiatrist or  
20 psychiatrist's designee shall make all reasonable efforts to  
21 solicit the subject's compliance with the prescribed treatment.  
22 If the subject fails or refuses to comply after the efforts to



1 solicit compliance, the [~~outpatient treatment~~] treating  
2 psychiatrist shall so notify the court and may submit a petition  
3 under part IV for the involuntary hospitalization of the  
4 subject, provided that the refusal of treatment shall not  
5 constitute evidence toward any of the criteria for involuntary  
6 hospitalization."

7 SECTION 10. Section 334-130, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "[~~+~~]~~\$334-130~~[~~+~~] **Discharge.** [~~An outpatient~~] A subject of  
10 assisted community treatment is automatically and fully  
11 discharged at the end of the family court ordered period of  
12 [~~outpatient~~] treatment, a period of not more than 180 days,  
13 unless a new family court order has been obtained [~~as provided~~  
14 ~~hereinbelow~~]."

15 SECTION 11. Section 334-131, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

17 "[~~+~~] (a) [~~+~~—~~An outpatient treatment~~] A treating psychiatrist  
18 shall commence the early discharge procedure for a subject of  
19 the order if the [~~outpatient treatment~~] treating psychiatrist  
20 finds that the subject no longer meets the criteria for  
21 [~~involuntary outpatient~~] assisted community treatment.



1       The [~~outpatient treatment~~] treating psychiatrist shall send  
2       to the clerk of the family court which issued the order for  
3       [~~involuntary outpatient~~] assisted community treatment,  
4       notification that in the psychiatrist's opinion the subject of  
5       the order should be discharged prior to the end of the period  
6       specified in the court order.

7       The clerk of the court shall then prepare and mail to the  
8       persons whom the family court order specified are entitled  
9       thereto, a notice of intent of early discharge. The notice of  
10      intent of early discharge shall be mailed at least five days  
11      prior to the intended date of discharge."

12      SECTION 12. Section 334-132, Hawaii Revised Statutes, is  
13      amended to read as follows:

14      "~~[§]§334-132[§]~~ **Objection to discharge.** Any person who  
15      has received a notice of intent to early discharge a subject of  
16      the order may file an objection with the family court. Upon  
17      receipt of an objection, the family court shall hold a hearing  
18      on the discharge. The hearing shall be conducted as provided  
19      under section 334-134.

20      If the family court finds by clear and convincing evidence  
21      that the subject of the order continues to meet the criteria for  
22      [~~involuntary outpatient~~] assisted community treatment, the





1 family court shall order the subject to continue the  
2 ~~[outpatient]~~ treatment for the unexpired period of its earlier  
3 order.

4 If the family court finds that the subject of the order  
5 does not meet the criteria for ~~[involuntary-outpatient]~~ assisted  
6 community treatment, the family court shall dismiss the  
7 objection and order the early discharge of the subject."

8 SECTION 13. Section 334-133, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "[+]§334-133[+] **Petition for additional period of**  
11 **treatment; hearing.** Prior to the expiration of the period of  
12 ~~[involuntary-outpatient]~~ assisted community treatment ordered by  
13 the family court, any person, including ~~[an-outpatient~~  
14 ~~treatment]~~ a treating psychiatrist, may file a petition with the  
15 family court for an order of continued ~~[involuntary-outpatient]~~  
16 assisted community treatment. The petition shall be filed and  
17 notice provided in the same manner as under sections 334-123 and  
18 334-125.

19 The family court shall hold a hearing on the petition and  
20 make its decision in the same manner as provided under sections  
21 334-123 to 334-127. The family court may order the continued  
22 ~~[involuntary-outpatient]~~ assisted community treatment for not



1 more than ~~[180-days]~~ one year after the date of the hearing  
2 pursuant to this section.

3 Nothing in this section shall preclude the subject's  
4 stipulation of continuing an existing court order.

5 This section shall be in addition to the provisions on the  
6 objection to discharge."

7 SECTION 14. Section 334-134, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "[~~§~~]**\$334-134**[~~§~~] **Hearing for discharge.** Any person may  
10 petition the family court for the discharge of an order of  
11 ~~[involuntary-outpatient]~~ assisted community treatment during the  
12 period of ~~[outpatient]~~ community treatment ~~[if more than]~~ after  
13 sixty days ~~[after]~~ from the most recent hearing involving the  
14 subject of the order. The petition shall be filed, notice  
15 given, hearing held, and order made in the same manner as  
16 provided for the original petition alleging that the subject of  
17 the order met the criteria for ~~[involuntary-outpatient]~~ assisted  
18 community treatment."

19 SECTION 15. Section 334-141, Hawaii Revised Statutes, is  
20 amended by amending the definition of "outpatient treatment" to  
21 read as follows:



1        "~~Outpatient treatment includes~~ "Community services  
2        include any substance abuse or mental health treatment provided  
3        through individual or group therapy~~[7]~~; a hospital; day or  
4        partial day programs, and intensive day treatment ~~[and which~~  
5        ~~does not require the individual to reside on a twenty four hour~~  
6        ~~basis in the facility for more than three days to]~~ ; residential  
7        programs or inpatient units; or a mental health unit in a  
8        correctional facility where the individual may receive benefit  
9        from the treatment program."

10        SECTION 16. Chapter 334, part VIII, Hawaii Revised  
11        Statutes, is amended by amending its title to read as follows:

12        "**PART VIII. ~~[INVOLUNTARY OUTPATIENT]~~ ASSISTED COMMUNITY**  
13        **TREATMENT"**

14        SECTION 17. Statutory material to be repealed is bracketed  
15        and stricken. New statutory material is underscored.

16        SECTION 18. This Act shall take effect upon its approval.

17  
INTRODUCED BY:

*Elizabeth Chun Oakes*

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# S.B. NO. 310

**Report Title:**

Mental Health; Involuntary Outpatient Treatment; Assisted  
Community Treatment

**Description:**

Establishes an assisted community treatment program in lieu of the involuntary outpatient treatment program. Replaces the term "involuntary outpatient treatment" with "assisted community treatment". Makes several amendments regarding involuntary outpatient treatment procedures.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

